

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 23, 2008

JEFF HAITHCOTE v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Wayne County
No. 14078 Robert Holloway, Judge**

No. M2007-01416-CCA-R3-HC - Filed November 19, 2008

Petitioner, Jeff Haithcote, appeals the trial court's summary dismissal of his petition for writ of habeas corpus. After a thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Jeff Haithcote, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General, and T. Michel Bottoms, District Attorney General, for the appellee, the State of Tennessee.

OPINION

On April 7, 1994, Petitioner was found guilty in Bedford County Circuit Court case number 13341 of the casual exchange of drugs, a Class A misdemeanor, and was sentenced to eleven months, twenty-nine days. On August 18, 1994, Petitioner was found guilty in Bedford County Circuit Court case number 13342 of the sale of a Schedule VI controlled substance, a Class E felony, and was sentenced to four years as a Range I, standard offender, to be served concurrently with his sentence in case number 13341. Each conviction was the result of a guilty verdict following a jury trial. Petitioner filed a petition for writ of habeas corpus relief alleging that his sentences in case numbers 13341 and 13342 are illegal and void. The trial court summarily dismissed the habeas corpus petition without granting an evidentiary hearing.

In his appeal, Petitioner submits that he was on parole for a 1989 armed robbery conviction when he committed the 1994 drug offenses, and the trial court should have ordered him to serve his drug sentences consecutively to his armed robbery sentence pursuant to Rule 32 of the Tennessee Rules of Criminal Procedure. Petitioner acknowledges that his sentences in case numbers 13341 and

13342, as well as his sentence for his armed robbery conviction, have expired. Petitioner argues, however, that the convictions in case numbers 13341 and 13342 continue to be used against him for enhancement purposes in his sentencing for subsequent convictions. The right to habeas corpus relief is available “only when ‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired.” Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007) (quoting Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993)). In contrast to a post-conviction petition, a habeas corpus petition is used to challenge void and not merely voidable judgments. Id. at 255-56. A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity. Id. at 256; Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). A void judgment “is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment.” Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999); Dykes, 978 S.W.2d at 529.

A petitioner bears the burden of proving a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of counsel and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. See Summers, 212 S.W.3d at 260; Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

The determination of whether habeas corpus relief should be granted is a question of law. Summers, 212 S.W.3d at 255; Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). Therefore, our review is de novo with no presumption of correctness given to the findings and conclusions of the lower court. Summers, 212 S.W.3d at 255; State v. Livingston, 197 S.W.3d 710, 712 (Tenn. 2006).

The State argues that the trial court properly dismissed Petitioner’s habeas corpus petition because Petitioner failed to follow the procedural rules governing such petitions. See T.C.A. § 29-21-107. Specifically, the State contends that Petitioner failed to state that the legality of the restraint has not already been adjudged upon a prior proceeding, and whether this is Petitioner’s first application for the writ. Id. § 29-21-107(b)(3) and (4); see Hickman v. State, 153 S.W.3d 16, 21 (Tenn. 2004) (observing that a trial court may properly chose to dismiss a habeas corpus petition for failing to comply with the statutory procedural requirements).

Procedural difficulties notwithstanding, however, the State argues, and we agree, that Petitioner has failed to show that he is either “imprisoned” or “restrained of liberty” by his conviction in case number 13342. Tennessee Code Annotated section 29-21-101 provides that “any person imprisoned or restrained of liberty, under any pretense whatsoever ... may prosecute a writ of habeas corpus.” Our supreme court has interpreted the term “imprisoned” to include actual physical confinement or detention but has defined “restrained of liberty” more broadly to include any restraint on freedom of action or movement, such as a limitation to a specific jurisdiction. Hickman,

153 S.W.3d at 22-23. Our supreme court has not, however, extended the term “restraint of liberty” to a collateral consequence of a judgment, such as the enhancement of a subsequent sentence.

In Hickman, the petitioner pled guilty to one count of possession of marijuana in 1986 and received a ten-day suspended sentence and a fifty-dollar fine. Some sixteen years later, after being convicted of a subsequent crime and facing possible sentence enhancement in the United States District Court, the petitioner filed a petition for writ of habeas corpus, contending that the possibility of sentence enhancement based upon the 1986 conviction was a restraint on his liberty. Our supreme court concluded that the petitioner was not entitled to habeas corpus relief, holding that:

a person is not “restrained of liberty” for purposes of the habeas corpus statute unless the challenged judgment itself imposes a restraint upon the petitioner's freedom of action or movement. Use of the challenged judgment to enhance the sentence imposed on a separate conviction is not a restraint of liberty sufficient to permit a habeas corpus challenge to the original conviction long after the sentence on the original conviction has expired.

Id. at 23; see also Benson v. State, 153 S.W.3d 27, 32 (Tenn. 2004).

Because Petitioner has already fully served his sentences in case numbers 13341 and 13342, as well as his armed robbery sentence, he is not “imprisoned” as a direct result of any of these convictions. Neither is he “restrained of liberty” under the rationale of our supreme court in Hickman, although these convictions have apparently been used to enhance Petitioner’s sentences for current offenses. The use of these convictions to enhance future sentences is merely a collateral consequence. Thus, Petitioner is not entitled to habeas corpus relief.

We note that Petitioner also challenges the Department of Correction’s calculation of the expiration date of his sentence in case number 13342. Petitioner argues that he entered into a sentencing agreement with the State in case number 13342 whereby Petitioner agreed to waive his right to appeal in exchange for a four-year sentence to be served concurrently with the remainder of his 1989 sentence for armed robbery. Petitioner submits that the Department of Correction “illegally” altered his sentencing agreement by calculating Petitioner’s sentence in case number 13342 to run consecutively to his sentence for armed robbery.

First, we note that the question of whether the Department of Correction is properly calculating a petitioner’s sentence cannot be raised in a habeas corpus proceeding. To challenge such calculations, a petitioner must proceed under the Uniform Administrative Procedures Act in the Chancery Court for Davidson County, Tennessee. Kendrick Kelly v. Mills, No. W2004-01106-CCA-R3-HC, 2004 WL 2290496, at *2 (Tenn. Crim. App. Oct. 8, 2004), no perm. to appeal filed. Moreover, because Petitioner has fully served both his armed robbery sentence and his sentence in case number 13342, his challenge to the Department of Correction’s calculation is moot, and does not fall within any exception to the rule of mootness. See, e.g., McIntyre v. Traugher, 884 S.W.2d 134, 137-138 (Tenn. App. 1994); State v. Doe, 813 S.W.2d 150, 152 (Tenn. Crim. App. 1991); see

also Jeffrey Wayne Haithcote v. Campbell, No. M2001-01828-C0A-R3-CV, 2002 WL 1838152 (Tenn. Ct. App. Aug. 13, 2002).

Nonetheless, we observe that a defendant who is convicted of a felony committed while on parole must serve the remainder of the sentence under which the defendant was paroled before the defendant commences serving the sentence received for the felony committed while on parole. T.C.A. § 40-28-123(a); see also Tenn. R. Crim. P. 32(c)(3)(A). Petitioner's judgment of conviction in case number 13342 does not refer to his armed robbery sentence or his parole status. However, Rule 32(c)(3) of the Tennessee Rules of Criminal Procedures provides that:

[w]here a defendant is convicted of multiple offenses from one trial or where the defendant has additional sentences not yet fully served as the result of the convictions in the same or other court and the law requires consecutive sentences, the sentence shall be consecutive whether the judgment explicitly so orders or not. This rule shall apply: (A) to a sentence for a felony committed while on parole for a felony; (B) to a sentence for escape or for a felony committed while on escape; (C) to a sentence for a felony where the defendant was released on bail and the defendant is convicted of both offenses; and (D) any other ground provided by law.

(Emphasis added). Therefore, by rule, the Department of Correction was required to treat the sentences as consecutive, "whether the judgment explicitly so orders or not."

CONCLUSION

After a thorough review, we affirm the trial court's denial of the petition for habeas corpus relief.

THOMAS T. WOODALL, JUDGE